

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

SE'BRYNE O. WALTHALL,

Petitioner,  
v.

Civil Action No. 2:14-CV-13510  
HONORABLE MAUREEN O. BATTANI  
UNITED STATES DISTRICT COURT

KENNETH MCKEE,

Respondent,  
\_\_\_\_\_ /

**ORDER DIRECTING THE CLERK OF THE COURT TO TRANSFER THE  
PETITION FOR A CERTIFICATE OF PROBABLE CAUSE [Dkt. # 11] TO THE  
UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT**

On October 27, 2014, this Court dismissed petitioner's habeas application for being duplicative to a habeas case pending before Judge Judith E. Levy and denied petitioner a certificate of appealability or leave to appeal *in forma pauperis*. See Walthall v. McKee, No. 2:14-CV-13510 (E.D. Mich. October 27, 2014). On December 3, 2014, the Court again denied petitioner a certificate of appealability and leave to appeal *in forma pauperis*.

Petitioner has filed a petition for a certificate of probable cause, which this Court construes as a motion for a certificate of appealability.<sup>1</sup> The heading on petitioner's motion, however, is addressed to the United States Court of Appeals for the Sixth Circuit.

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<sup>1</sup> See Hill v. Johnson, 114 F. 3d 78, 81 (5<sup>th</sup> Cir. 1997).

The proper procedure when a district court denies a certificate of appealability is for the petitioner to file a motion for a certificate of appealability before the appellate court in the appeal from the judgment denying the petition for writ of habeas corpus or the motion to vacate sentence. See Sims v. U.S., 244 F. 3d 509 (6th Cir. 2001)(citing Fed. R.App. P. 22(b)(1)). Petitioner has apparently done so in this case, although he has filed his motion with the district court, rather than the Sixth Circuit.

The Court will therefore order that the Clerk of the Court to transfer Petitioner's Petition for a Certificate of Probable Cause [Dkt. # 11] to the United States Court of Appeals for the Sixth Circuit pursuant to 28 U.S.C. § 1631.

Date: March 9, 2015

s/Marianne O. Battani  
MARIANNE O. BATTANI  
United States District Judge

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing Order was served upon counsel of record via the Court's ECF System to their respective email addresses or First Class U.S. mail to the non-ECF participants on March 9, 2015.

s/ Kay Doaks  
Case Manager